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5 IN THE UNITED STATES DISTRICT COURT
6 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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8 EDWARD ALVARADO, et al.

No. C 04-00098 SI

No. C 04-00099 SI

9 Plaintiffs,

10 v.

**ORDER DENYING PLAINTIFFS'
REQUEST FOR DISMISSAL WITHOUT
PREJUDICE**

11 FEDEX CORPORATION,

12 Defendant.
13 _____/

14
15 By letter filed October 17, 2005, plaintiffs Alexander Rivera, Dyronn Theodore and Gary White
16 request dismissal without prejudice. Plaintiffs state that they wish to participate in the pending class action,
17 *Satchell et al. v. FedEx Corporation*, 03-2659 SI. Defendant opposes the request.

18 The Court hereby DENIES plaintiffs' request. Plaintiffs filed their individual actions after the *Satchell*
19 class action was filed, and thus made the choice to pursue individual litigation outside the class context.
20 Considerable discovery has already taken place in the individual actions, and the parties have extensively
21 briefed summary judgment motions with respect to all three plaintiffs. Oral argument on defendant's motion
22 for summary judgment on plaintiff Theodore is scheduled for November 10, 2005, and oral argument on the
23 motions with respect to plaintiffs White and Rivera is scheduled for November 21, 2005.

24 Dismissal under Federal Rule of Civil Procedure 41(a)(2) is committed to the "sound discretion" of the
25 Court. *Stevedoring Servs. of America v. Armilla Intern. B.V.*, 889 F.2d 919, 921 (9th Cir. 1989). Plaintiffs
26 have provided no persuasive reason for dismissal without prejudice at this advanced stage of the litigation, and
27 the Court concludes that dismissal without prejudice would be unfair to defendant. *See id.*

28 Accordingly, plaintiffs' request for dismissal without prejudice is DENIED. [# 298].

IT IS SO ORDERED.

Dated: October 18, 2005



SUSAN ILLSTON
United States District Judge

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